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Tetris Holding, LLC and The Tetris Company, LLC*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

TETRIS HOLDING, LLC and THE TETRIS
COMPANY, LLC,

Plaintiffs and Counterclaim
Defendants,

- against -

XIO INTERACTIVE INC.,

Defendant and Counterclaim
Plaintiff.

Case No. 3:09-cv-6115 (FLW) (DEA)

Hon. Freda L. Wolfson, U.S.D.J.
Hon. Douglas E. Arpert, U.S.M.J.

**PLAINTIFFS AND COUNTERCLAIM
DEFENDANTS' THIRD AMENDED
SUPPLEMENTAL WRITTEN
OBJECTIONS AND RESPONSES TO
XIO INTERACTIVE INC.'S FIRST SET
OF INTERROGATORIES**

Pursuant to Federal Rules of Civil Procedure 26 and 33 and the Local Rules of the United States District Court for the District of New Jersey, Plaintiffs and Counterclaim Defendants Tetris Holding, LLC and The Tetris Company, LLC (collectively, "The Tetris Company") hereby submit their third amended supplemental written objections and responses to Defendant

and Counterclaim Plaintiff Xio Interactive Inc.'s ("Xio") First Set of Interrogatories (the "Interrogatories"; and each individual interrogatory, an "Interrogatory") as follows.

GENERAL OBJECTIONS

The Tetris Company makes the following general reservations of rights and asserts the following General Objections to the Interrogatories:

1. The Tetris Company objects to the Interrogatories to the extent that they purport to impose obligations beyond those set forth in the Local Rules of the United States District Court for the District of New Jersey and the Federal Rules of Civil Procedure.

2. The Tetris Company objects to the Interrogatories to the extent that they seek information that was prepared or obtained for or in anticipation of litigation, constitutes attorney work product, is subject to the attorney-client privilege, or is otherwise privileged under federal or state law. The Tetris Company does not waive, intends to preserve, and is preserving the attorney-client privilege, the work-product privilege, the joint-defense privilege, the business-strategy immunity, and every other applicable privilege or protection with respect to any information protected by such a privilege or protection.

3. The Tetris Company objects to the Interrogatories to the extent that they seek proprietary or confidential business information, trade secrets, or other sensitive information, or documents that contain information that is non-responsive to the Interrogatories. To the extent that the response to any Interrogatory requires the disclosure of any non-privileged proprietary or confidential information, trade secrets, or other sensitive information, The Tetris Company will provide such information subject to a protective order entered by the Court in this case.

4. The Tetris Company objects to Xio's use of the terms "YOU" and "YOUR" to the extent that their definitions include non-parties on the grounds that such definitions are overbroad, unduly burdensome, and oppressive; purport to impose obligations on The Tetris

Company beyond those imposed by the applicable rules and law; and seek documents, materials, and information created and/or obtained by parties other than The Tetris Company.

5. The Tetris Company objects to the Interrogatories to the extent that they seek information that is in Xio's possession, custody, or control or that is readily available to Xio, whether from public sources or other, less burdensome means of discovery.

6. Pursuant to Federal Rule of Civil Procedure 33(a)(1), The Tetris Company objects to the Interrogatories to the extent that they, including all discrete subparts, exceed twenty-five (25) interrogatories.

7. The Tetris Company objects to the Interrogatories to the extent that they prematurely require The Tetris Company to provide information that is the subject of expert disclosures under Rule 26(a)(2) of the Federal Rules of Civil Procedure.

8. The Tetris Company objects to the Interrogatories to the extent that they prematurely ask or require The Tetris Company to analyze or formulate contentions on matters as to which The Tetris Company's investigation and discovery have not yet been completed. The objections and responses herein are based on the investigation conducted to date and are without prejudice to any later supplementation, amendment, or modification.

9. The Tetris Company objects to the Interrogatories to the extent that they unfairly seek to restrict the facts on which The Tetris Company may rely at trial. Discovery has not been completed and The Tetris Company is not yet necessarily in possession of all the facts and documents upon which The Tetris Company intends to rely. The objections and responses submitted herewith are tendered to Xio with the reservation that they are submitted without limiting the evidence upon which The Tetris Company may rely to support the contentions that The Tetris Company may assert at the trial of this action and/or to rebut or impeach the

contentions, assertions, and evidence that Xio may present. The Tetris Company reserves the right to supplement or amend the responses at a future date.

10. The Tetris Company objects to the Interrogatories to the extent that they improperly call for legal conclusions.

11. The Tetris Company objects to the Interrogatories to the extent that they are vague and ambiguous because they fail to state with reasonable particularity the information being sought.

12. The Tetris Company objects to the Interrogatories to the extent that they seek identification of, and information set forth in, documents that are outside The Tetris Company's possession, custody, or control.

13. The Tetris Company objects to the Interrogatories to the extent that they are not limited to a time-period that is relevant to this action.

14. The Tetris Company objects to the Interrogatories to the extent that they are not limited to a geographic area or territory that is relevant to this action.

15. The Tetris Company's responses to these Interrogatories shall not be interpreted as conceding the truth of any factual assertion or implication contained in the Interrogatories.

16. In providing responses to the Interrogatories, The Tetris Company does not in any way intend to waive or waive, but rather intends to preserve and is preserving:

- (i) All objections as to competency, authenticity, relevancy, materiality, and admissibility;
- (ii) All rights to object on any grounds to the use in any subsequent proceedings of any of the responses or information contained herein, including without limitation the right to object at the trial of this or any other action;

(iii) All objections as to vagueness and ambiguity; and

(iv) All rights to object on any grounds to any further interrogatories.

17. The Tetris Company incorporates the above statements and General Objections into each and every one of its responses to the Interrogatories as set forth below.

INTERROGATORIES

INTERROGATORY NO. 1:

Please list all copyright registrations for all ASSERTED COPYRIGHT(S).

RESPONSE TO INTERROGATORY NO. 1:

The Tetris Company incorporates by reference the above-stated General Objections as if fully set forth herein. The Tetris Company specifically objects to this Interrogatory to the extent that it is not limited to U.S. copyright registrations.

Subject to and without waiving the foregoing objections, The Tetris Company responds as follows: The Tetris Company alleges that Xio has infringed copyrighted expression contained in the following works, which are registered in the United States: *Tetris* Version 0 (Reg. No. PAu 1-214-036), *Tetris* Version 1 (Reg. No. PAu 1-214-035), *Tetris* Version 2 (Reg. No. PA 412-169), *Tetris* (Reg. No. PA 412-170), *Tetris NES Edition* (Reg. No. PAu-1-284-318), *Tetris Game Boy* (Reg. No. PA-532-076), *Tetris Zone* (Reg. No. PA 1-381-624), *Tetris (EA Multiplayer)* (Reg. No. PA 1-626-333), *Tetris Evolution (Xbox360)* (Reg. No. PA 1-644-901), *Tetris (iPhone)* (Reg. No. PA 1-616-754), *Tetris Pop* (Reg. No. PA0001652926), and *Tetris DX* (Reg. No. PA 0001654203).

INTERROGATORY NO. 2:

Please list all trademark registrations for all ASSERTED TRADEMARK(S).

RESPONSE TO INTERROGATORY NO. 2:

The Tetris Company incorporates by reference the above-stated General Objections as if fully set forth herein. The Tetris Company specifically objects to this Interrogatory to the extent that it is not limited to U.S. trademark registrations.

Subject to and without waiving the foregoing objections, The Tetris Company responds as follows: The Tetris Company has not alleged that Xio has infringed any of its registered trademarks.

INTERROGATORY NO. 3:

If any ASSERTED COPYRIGHT(S) or ASSERTED TRADEMARK(S) are not registered, please identify them.

RESPONSE TO INTERROGATORY NO. 3:

The Tetris Company incorporates by reference the above-stated General Objections as if fully set forth herein. Also, The Tetris Company specifically objects to this Interrogatory to the extent that it is not limited to trademarks used in the United States.

Subject to and without waiving the foregoing objections, The Tetris Company responds as follows: The Tetris Company alleges that Xio has infringed copyrighted expression contained in *Tetris Mission 2009*, which is a foreign work and is not registered in the United States. In addition, The Tetris Company alleges that Xio has infringed its trademarked T-shaped Tetrimino logo.

INTERROGATORY NO. 4:

For all ASSERTED COPYRIGHT(S), please provide an exclusive list of elements that YOU contend are expressive.

RESPONSE TO INTERROGATORY NO. 4:

The Tetris Company incorporates by reference the above-stated General Objections as if fully set forth herein. The Tetris Company also specifically objects to this Interrogatory as vague and ambiguous as to the phrase “expressive.” The Tetris Company also specifically objects to this Interrogatory as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks a complete list of all of the expression contained in The Tetris Company’s copyrighted works, which are identified in the responses to Interrogatory Nos. 1 and 3 above. The Tetris Company further specifically objects to the extent that this Interrogatory calls for a legal conclusion.

Subject to and without waiving the foregoing objections, The Tetris Company responds as follows: The expression contained in The Tetris Company’s copyrighted works, which are identified in the responses to Interrogatory Nos. 1 and 3 above, can be ascertained by reviewing the games themselves or videos of game play. The Tetris Company has produced the games or videos of game play for the following games: *Tetris Version 0* (TETRIS-XIO-0000047), *Tetris Version 1* (TETRIS-XIO-0000047), *Tetris Version 2* (TETRIS-XIO-0000047), *Tetris* (TETRIS-XIO-0000047), *Tetris NES Edition* (TETRIS-XIO-0000048), *Tetris Game Boy* (TETRIS-XIO-0000049), *Tetris Zone* (TETRIS-XIO-0000050), *Tetris (EA Multiplayer)* (TETRIS-XIO-0000051), *Tetris Evolution (Xbox360)* (TETRIS-XIO-0000052), *Tetris (iPhone)* (TETRIS-XIO-0000053), *Tetris Pop* (TETRIS-XIO-0000054-55), *Tetris DX* (TETRIS-XIO-0000056), and *Tetris Mission 2009* (TETRIS-XIO-0000057).

This expression, which is included in some and/or all of The Tetris Company's works, includes, but is not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., "Minos") joined together at the sides, which typically are brightly colored in devices that allow for color and generally do not appear as solid shapes, rather the individual Minos are delineated; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the display of the next playing piece that will fall down the matrix above the playing field; the starting orientation of the playing pieces; the appearance of a "ghost" piece or shadow piece under the playing piece; the change in color of the playing pieces when they are in lock-down mode; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line; the appearance of Minos automatically filling in the matrix from the bottom to the top when the game is over; the display of "incoming lines" with at least one missing Mino in random order that appear during game play; the display of "garbage lines" with at least one missing Mino in random order; and the screen layout in multiplayer versions with the player's matrix appearing most prominently on the screen and the opponents' matrixes appearing smaller than the player's matrix and to the side of the player's matrix.

AMENDED SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4 (JULY 1, 2010)

The Tetris Company incorporates by reference the above-stated General Objections and the aforementioned specific objections as if fully set forth herein.

The visual elements contained in *Tetris Version 0*, *Tetris Version 1*, *Tetris Version 2* and *Tetris* that are protected by copyright include, but are not limited to, the seven geometric playing

pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the disappearance of any completed horizontal line; and the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line.

The visual elements contained in *Tetris NES Edition* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the disappearance of any completed horizontal line; and the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line.

The visual elements contained in *Tetris Game Boy* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored in devices that allow for color and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the disappearance of any completed horizontal line; the

subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line; the appearance of Minos automatically filling in the matrix from the bottom to the top when the game is over; and the display of “garbage lines” with at least one missing Mino.

The visual elements contained in *Tetris Zone* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the appearance of a “ghost” piece or shadow piece under the playing piece; the change in color of the playing pieces when they are in lock-down mode; the disappearance of any completed horizontal line; and the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line.

The visual elements contained in *Tetris (EA Multiplayer)* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the appearance of a “ghost” piece or shadow piece under the playing piece; the change in color of the playing pieces when they are in lock-down mode; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field

as a result of the downward shift into the space vacated by the disappearing line; the display of “garbage lines” with at least one missing Mino in random order; and the screen layout in multiplayer versions with the player’s matrix appearing most prominently on the screen and the opponents’ matrixes appearing smaller than the player’s matrix and to the side of the player’s matrix.

The visual elements contained in *Tetris Evolution (Xbox360)* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the display of the next playing piece that will fall down the matrix above the playing field; the starting orientation of the playing pieces; the appearance of a “ghost” piece or shadow piece under the playing piece; the change in color of the playing pieces when they are in lock-down mode; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line; and the display of brightly colored “garbage lines” with at least one missing Mino in random order.

The visual elements contained in *Tetris (iPhone)* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating

movements of the playing pieces; the starting orientation of the playing pieces; the appearance of a “ghost” piece or shadow piece under the playing piece; the disappearance of any completed horizontal line; and the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line.

The visual elements contained in *Tetris Pop* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the appearance of a “ghost” piece or shadow piece under the playing piece; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line; and the display of “incoming lines” with at least one missing Mino in random order that appear during game play.

The visual elements contained in *Tetris DX* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing

line; the appearance of Minos automatically filling in the matrix from the bottom to the top when the game is over; and the display of “garbage lines” with at least one missing Mino.

The visual elements contained in *Tetris Mission 2009* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the appearance of a “ghost” piece or shadow piece under the playing piece; the change in color of the playing pieces when they are in lock-down mode; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line; the appearance of Minos automatically filling in the matrix from the bottom to the top when the game is over; and the display of “incoming lines” with at least one missing Mino in random order that appear during game play.

**SECOND AMENDED SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4
(JANUARY 6, 2011)**

The Tetris Company incorporates by reference the above-stated General Objections and the aforementioned specific objections as if fully set forth herein.

The visual elements contained in *Tetris Version 0*, *Tetris Version 1*, *Tetris Version 2* and *Tetris* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating

movements of the playing pieces; the starting orientation of the playing pieces; the disappearance of any completed horizontal line; and the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line.

The visual elements contained in *Tetris NES Edition* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the disappearance of any completed horizontal line; and the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line.

The visual elements contained in *Tetris Game Boy* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored in devices that allow for color and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line; the appearance of Minos

automatically filling in the matrix from the bottom to the top when the game is over; and the display of “garbage lines” with at least one missing Mino.

The visual elements contained in *Tetris Zone* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the appearance of a “ghost” piece or shadow piece under the playing piece; the change in color of the playing pieces when they are in lock-down mode; the disappearance of any completed horizontal line; and the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line.

The visual elements contained in *Tetris (EA Multiplayer)* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the appearance of a “ghost” piece or shadow piece under the playing piece; the change in color of the playing pieces when they are in lock-down mode; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line; the appearance of Minos automatically filling in the matrix from the bottom to the top when the game is over;

the display of “garbage lines” with at least one missing Mino in random order; and the screen layout in multiplayer versions with the player’s matrix appearing most prominently on the screen and the opponents’ matrixes appearing smaller than the player’s matrix and to the side of the player’s matrix.

The visual elements contained in *Tetris Evolution (Xbox360)* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the display of the next playing piece that will fall down the matrix above the playing field; the starting orientation of the playing pieces; the appearance of a “ghost” piece or shadow piece under the playing piece; the change in color of the playing pieces when they are in lock-down mode; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line; and the display of brightly colored “garbage lines” with at least one missing Mino in random order.

The visual elements contained in *Tetris (iPhone)* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the appearance of

a “ghost” piece or shadow piece under the playing piece; the disappearance of any completed horizontal line; and the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line.

The visual elements contained in *Tetris Pop* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the appearance of a “ghost” piece or shadow piece under the playing piece; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line; and the display of “incoming lines” with at least one missing Mino in random order that appear during game play.

The visual elements contained in *Tetris DX* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing

line; the appearance of Minos automatically filling in the matrix from the bottom to the top when the game is over; and the display of “garbage lines” with at least one missing Mino.

The visual elements contained in *Tetris Mission 2009* that are protected by copyright include, but are not limited to, the seven geometric playing pieces formed by four equally-sized blocks (i.e., “Minos”) joined together at the sides, which are brightly colored and appear as individually delineated Minos; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the starting orientation of the playing pieces; the appearance of a “ghost” piece or shadow piece under the playing piece; the change in color of the playing pieces when they are in lock-down mode; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line; the appearance of Minos automatically filling in the matrix from the bottom to the top when the game is over; and the display of “incoming lines” with at least one missing Mino in random order that appear during game play.

INTERROGATORY NO. 5:

For all ASSERTED TRADEMARK(S), please provide an exclusive list of elements that YOU contend are non-functional.

RESPONSE TO INTERROGATORY NO. 5:

The Tetris Company incorporates by reference the above-stated General Objections as if fully set forth herein. The Tetris Company specifically objects to the extent that this Interrogatory calls for a legal conclusion. The Tetris Company also specifically objects to this

Interrogatory as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks a complete list of all non-functional elements. The Tetris Company further specifically objects to this Interrogatory as vague and ambiguous as to the phrase “elements that YOU contend are non-functional.”

Subject to and without waiving the foregoing objections, The Tetris Company responds as follows: The Tetris Company’s trademarked T-shaped Tetrimino logo is non-functional.

INTERROGATORY NO. 6:

For any ASSERTED TRADE DRESS, please provide an exclusive list of elements that YOU contend are non-functional.

RESPONSE TO INTERROGATORY NO. 6:

The Tetris Company incorporates by reference the above-stated General Objections as if fully set forth herein. The Tetris Company specifically objects to the extent that this Interrogatory calls for a legal conclusion. The Tetris Company also specifically objects to this Interrogatory as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks a complete list of all non-functional elements. The Tetris Company further specifically objects to this Interrogatory as vague and ambiguous as to the phrase “elements that YOU contend are non-functional.”

Subject to and without waiving the foregoing objections, The Tetris Company responds as follows: The Tetris Company owns the distinctive *Tetris* trade dress, which is comprised of distinctive and non-functional visual elements that appear on the screen when the game commences and is played, including, but not limited to, the brightly-colored geometric playing

pieces, which are formed by four equally-sized, delineated blocks (Minos), and the long vertical rectangle playing field, which is higher than wide.

INTERROGATORY NO. 7:

Please list the elements of Xio's product(s) that YOU contend infringe any ASSERTED COPYRIGHT(S), ASSERTED TRADEMARK(S) and/or ASSERTED TRADE DRESS, and specify how those elements infringe the ASSERTED COPYRIGHT(S), ASSERTED TRADEMARK(S), and/or ASSERTED TRADE DRESS.

RESPONSE TO INTERROGATORY NO. 7:

The Tetris Company incorporates by reference the above-stated General Objections as if fully set forth herein. The Tetris Company specifically objects to the extent the Interrogatory calls for a legal conclusion. The Tetris Company also specifically objects to this Interrogatory to the extent that it seeks information that is in Xio's possession, custody, or control. The Tetris Company further objects to this Interrogatory to the extent that it prematurely requires The Tetris Company to provide information that is the subject of expert disclosures under Rule 26(a)(2) of the Federal Rules of Civil Procedure. The Tetris Company also objects to this Interrogatory to the extent that it prematurely asks or requires The Tetris Company to analyze or formulate contentions on matters as to which The Tetris Company's investigation and discovery have not yet been completed.

Subject to and without waiving the foregoing objections, The Tetris Company responds as follows: Xio has infringed the copyrights of The Tetris Company's games, which are identified in the responses to Interrogatory Nos. 1 and 3 above, by, *inter alia*, copying, publicly displaying, and distributing the *Mino* and *Mino Lite* games, which are substantially similar to and

derived from the copyrighted *Tetris* games, without any authorization or other permission from The Tetris Company. Xio's *Mino* and *Mino Lite* games copy the original and creative visual expression in The Tetris Company's *Tetris* games, including, but not limited to, the following expression, which is included in some and/or all of the copyrighted games: seven geometric playing pieces formed by four equally-sized blocks (i.e., "Minos") joined together at the sides, which typically are brightly colored in devices that allow for color and generally do not appear as solid shapes, rather the individual Minos are delineated; the long vertical rectangle playing field or matrix, which is higher than wide; the appearance of the playing pieces at the top of the matrix; the downward, lateral and rotating movements of the playing pieces; the display of the next playing piece that will fall down the matrix above the playing field; the starting orientation of the playing pieces; the appearance of a "ghost" piece or shadow piece under the playing piece; the change in color of the playing pieces when they are in lock-down mode; the disappearance of any completed horizontal line; the subsequent consolidation of the playing pieces remaining on the playing field as a result of the downward shift into the space vacated by the disappearing line; the appearance of Minos automatically filling in the matrix from the bottom to the top when the game is over; the display of "garbage lines" with at least one missing Mino in random order; and the screen layout in multiplayer versions with the player's matrix appearing most prominently on the screen and the opponents' matrixes appearing smaller than the player's matrix and to the side of the player's matrix.

Further, Xio infringes The Tetris Company's trade dress rights in its *Tetris* games by using a misleading design and look-and-feel for Xio's *Mino* and *Mino Lite* games. Xio has copied the distinctive and non-functional visual elements of the *Tetris* games that appear on the screen when the game commences and is played—including, but not limited to, the brightly-

colored geometric playing pieces, which are formed by four equally-sized, delineated blocks (Minos), and the long vertical rectangle playing field, which is higher than wide—thereby creating the misimpression among consumers about the affiliation, connection, association, origin, source, endorsement, sponsorship and approval of the *Mino* and *Mino Lite* games. Further compounding the confusion created by infringement of the *Tetris* trade dress and underscoring its bad-faith intent, Xio has used the name “Mino” for its games, which improperly trades off the name of The Tetris Company’s iconic and distinctive “Tetrimino” playing pieces. In addition, Xio has infringed The Tetris Company’s trademarked T-shaped Tetrimino logo by using a confusingly similar logo for its games, which misleads, and is likely to mislead, consumers as to the affiliation, connection, association, origin, source, endorsement, sponsorship and approval of the *Mino* and *Mino Lite* games.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7 (JULY 1, 2010)

The Tetris Company incorporates by reference the above-stated General Objections and the aforementioned specific objections as if fully set forth herein.

In addition to the elements listed herein, Xio’s *Mino* and *Mino Lite* games copy the following original and creative visual expression in The Tetris Company’s *Tetris* games, which is included in some of the copyrighted games: the display of “incoming lines” with at least one missing Mino in random order that appear during game play.

INTERROGATORY NO. 8:

Please identify all licensing, assignments, sales, and authorizations - either granted or acquired - RELATED TO YOUR intellectual property rights - including any ASSERTED COPYRIGHT(S), ASSERTED TRADEMARKS, and ASSERTED TRADE DRESS.

RESPONSE TO INTERROGATORY NO. 8:

The Tetris Company incorporates by reference the above-stated General Objections as if fully set forth herein. The Tetris Company also specifically objects to this Interrogatory as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks the identity of “all licensing, assignments, sales, and authorizations” related to all of The Tetris Company’s intellectual property rights, not just those at issue in this case. The Tetris Company also specifically objects to this Interrogatory as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks the identity of “all sales” related to The Tetris Company’s intellectual property rights, which could include, among other things, sales of the games to consumers. The Tetris Company also specifically objects to this Interrogatory as vague and ambiguous as to the phrase “authorizations.”

Subject to and without waiving the foregoing objections, The Tetris Company responds that, pursuant to Rule 33(d), upon entry of a protective order by this Court, it will produce (1) documents sufficient to identify assignments granted or acquired by, and licenses acquired by, The Tetris Company for the copyrights identified in the responses to Interrogatory Nos. 1 and 3 above, and (2) documents sufficient to identify licenses or assignments acquired or granted by The Tetris Company for the *Tetris* trade dress and trademark at issue in this litigation. When documents are produced, The Tetris Company will identify the Bates numbers of these documents to Xio.

**AMENDED SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 8
(FEBRUARY 15, 2011)**

The Tetris Company incorporates by reference the above-stated General Objections and the aforementioned specific objections as if fully set forth herein.

The Tetris Company has produced documents sufficient to respond to Interrogatory No.

8, including, but not limited to, the following documents:

(1) Documents sufficient to identify assignments granted or acquired by, and licenses acquired by, The Tetris Company for the copyrights identified in the responses to Interrogatory Nos. 1 and 3 above:

TETRIS-XIO-0007389
TETRIS-XIO-0011907
TETRIS-XIO-0012528
TETRIS-XIO-0013981
TETRIS-XIO-0014229
TETRIS-XIO-0014234
TETRIS-XIO-0036860
TETRIS-XIO-0037410
TETRIS-XIO-0037801
TETRIS-XIO-0040077
TETRIS-XIO-0062750
TETRIS-XIO-0065577

(2) Documents sufficient to identify licenses or assignments acquired or granted by The Tetris Company in the United States for the *Tetris* trade dress and trademark at issue in this litigation:

TETRIS-XIO-0000059
TETRIS-XIO-0000061
TETRIS-XIO-0013864
TETRIS-XIO-0009157
TETRIS-XIO-0014986
TETRIS-XIO-0014989
TETRIS-XIO-0014993
TETRIS-XIO-0022035
TETRIS-XIO-0022150
TETRIS-XIO-0037431
TETRIS-XIO-0037466
TETRIS-XIO-0045693
TETRIS-XIO-0061896
TETRIS-XIO-0062750
TETRIS-XIO-0063562
TETRIS-XIO-0065577
TETRIS-XIO-0074299

TETRIS-XIO-0074680
TETRIS-XIO-0074735
TETRIS-XIO-0074759
TETRIS-XIO-0074802
TETRIS-XIO-0074879
TETRIS-XIO-0075011
TETRIS-XIO-0075035
TETRIS-XIO-0075086
TETRIS-XIO-0076634
TETRIS-XIO-0076672
TETRIS-XIO-0079920

(3) In addition, The Tetris Company licensed its trade dress rights to Jaleco, but was not able to produce the License Agreements in this litigation because it was unable to obtain Jaleco's consent, as required by the terms of the License Agreement.

INTERROGATORY NO. 9:

Please identify the authors of any computer code of any games produced or sold under a license YOU granted for any ASSERTED COPYRIGHT(S), ASSERTED TRADEMARKS, and/or ASSERTED TRADE DRESS.

RESPONSE TO INTERROGATORY NO. 9:

The Tetris Company incorporates by reference the above-stated General Objections as if fully set forth herein. Further, The Tetris Company specifically objects to this Interrogatory as seeking information that is not relevant to any claim or defense in this litigation or reasonably calculated to lead to the discovery of admissible evidence because there is currently no claim for computer code infringement against Xio. The Tetris Company also specifically objects to this Interrogatory as overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks the identity of "any computer code of any games." The Tetris Company also specifically objects to this Interrogatory as vague and

ambiguous as to the phrase “games produced or sold under a license YOU granted for any ASSERTED COPYRIGHT(S), ASSERTED TRADEMARKS, and/or ASSERTED TRADE DRESS.” The Tetris Company also specifically objects to this Interrogatory to the extent that they seek identification of, and information set forth in, documents that are outside The Tetris Company’s possession, custody, or control.

INTERROGATORY NO. 10:

Please provide a description of the ownership history for each ASSERTED COPYRIGHT, ASSERTED TRADEMARK, and ASSERTED TRADE DRESS, from creation to present day.

RESPONSE TO INTERROGATORY NO. 10:

The Tetris Company incorporates by reference the above-stated General Objections as if fully set forth herein. The Tetris Company also specifically objects to this Interrogatory as overbroad and unduly burdensome in that it asks The Tetris Company to describe the ownership history from creation and present day. The Tetris Company also specifically objects to this Interrogatory as vague and ambiguous as to the phrase “ownership history.”

Subject to and without waiving any of the foregoing objections, The Tetris Company responds as follows: Alexey Pajitnov—one of Tetris Holding, LLC’s co-owners—authored the original versions of *Tetris* in the 1980s and was the exclusive owner of the rights in and to the game, including all copyrights and trade dress rights. In 1986, Mr. Pajitnov licensed his rights to Computing Center of the Academy of Sciences of the USSR (the “Computer Center”) for a 10-year term. The Computer Center assigned its rights to V/O Elektronorgtechnika d/b/a Elorg (“Elorg”). In 1989, Elorg obtained the following U.S. copyright registrations for the original

versions of *Tetris* as follows: *Tetris* Version 0 (Reg. No. PAu 1-214-036), *Tetris* Version 1 (Reg. No. PAu 1-214-035), *Tetris* Version 2 (Reg. No. PA 412-169), and *Tetris* (Reg. No. PA 412-170). In 1996, the rights in and to *Tetris* that were granted to the Computer Center reverted to Mr. Pajitnov. Mr. Pajitnov later assigned his rights in and to *Tetris* to Tetris Holding, LLC. In addition, the successor-in-interest to Elorg formally assigned the above-referenced copyright registrations, as well as any other rights it claimed to have in *Tetris*, to Tetris Holding, LLC in 2006.

Tetris NES Edition was authored by Nintendo Co., Ltd. in 1989 under license from Tetris Holding, LLC's predecessor-in-interest. In 1989, Nintendo of America Inc. obtained a U.S. copyright registration for *Tetris NES Edition* (Reg. No. PAu-1-284-318). Nintendo of America Inc. subsequently assigned the copyright registration to The Tetris Company, LLC, which assigned it to Tetris Holding, LLC.

Tetris Game Boy was authored by Nintendo Co., Ltd. in 1989 under license from Tetris Holding, LLC's predecessors-in-interest. In 1991, Nintendo of America Inc. obtained a U.S. copyright registration for *Tetris Game Boy* (Reg. No. PA-532-076). Nintendo of America Inc. subsequently assigned the copyright registration to The Tetris Company, LLC, which assigned it to Tetris Holding, LLC.

Tetris DX was authored by Nintendo Co., Ltd. in 1998 under license from the predecessor-in-interest to Tetris Holding, LLC. In 2009, Tetris Holding, LLC obtained an U.S. copyright registration for *Tetris DX* (Reg. No. PA 0001654203).

Tetris Zone was authored in 2007 by Blue Planet Software, Inc., Danny Han and Subventurate LLC under license from Tetris Holding, LLC's exclusive licensee, The Tetris Company, LLC. Mr. Han and Subventurate LLC assigned their rights to Blue Planet Software,

Inc., which subsequently assigned its rights to Tetris Holding, LLC. In 2007, Tetris Holding, LLC obtained a U.S. copyright registration for *Tetris Zone* (Reg. No. PA 1-381-624).

Tetris Evolution (Xbox360) was authored in 2007 by Mass Media, a third-party game developer, for THQ Inc., which has a license from Tetris Holding, LLC's exclusive licensee, The Tetris Company, LLC. Mass Media assigned its rights to THQ Inc., which assigned its rights to Tetris Holding, LLC. In 2009, Tetris Holding, LLC obtained a copyright registration for *Tetris Evolution (Xbox360)* (Reg. No. PA 1-644-901).

Tetris (EA Multiplayer), *Tetris (iPhone)*, and *Tetris Pop* were authored by Blue Planet Software, Inc. and Electronic Arts Inc. in 2008 under license from Tetris Holding, LLC's exclusive licensee, The Tetris Company, LLC. Blue Planet Software, Inc. assigned its rights to these games to Tetris Holding, LLC. In 2008, Tetris Holding, LLC and Electronic Arts Inc. obtained U.S. copyright registrations for *Tetris (EA Multiplayer)* (Reg. No. PA 1-626-333), *Tetris (iPhone)* (Reg. No. PA 1-616-754), and *Tetris Pop* (Reg. No. PA0001652926).

Tetris Mission 2009 was authored in 2008 by Com2uS, a Korean company, under a sublicense from Electronic Arts Inc., which has a license from Tetris Holding, LLC's exclusive licensee, The Tetris Company, LLC. Com2uS assigned its rights to Electronic Arts Inc., and Electronic Arts, Inc. assigned a joint ownership interest to The Tetris Company, LLC.

In addition, Tetris Holding, LLC owns the *Tetris* trade dress, which has been used in commerce in the United States in connection with electronic games by its licensees and its predecessors-in-interest's licensees. Further, Tetris Holding, LLC owns the trademarked T-shaped Tetrimino logo, which has been used by its licensees, including Electronic Arts Inc. in connection with electronic games on mobile devices.

As To Objections:

Dated: New York, New York
February 15, 2011

/s/ Johanna Schmitt

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*Attorneys for Plaintiffs/Counterclaim
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**VERIFICATION FOR TETRIS HOLDING, LLC'S AND THE TETRIS COMPANY,
LLC'S THIRD AMENDED SUPPLEMENTAL RESPONSES TO THE FIRST SET OF
INTERROGATORIES OF XIO INTERACTIVE INC.**

I, David Kwock, declare as follows:

1. I am the general counsel of Tetris Holding, LLC and The Tetris Company, LLC, both Plaintiffs and Counterclaim Defendants in the above-entitled action. I am duly authorized to make this verification for and on their behalf. I have made this verification solely in my capacity as an authorized agent thereof.

2. I have read the foregoing Plaintiffs and Counterclaim Defendants' Third Amended Supplemental Written Objections and Responses to Xio Interactive Inc.'s First Set of Interrogatories and know the contents thereof, and assert that to the best of my knowledge and information, the foregoing responses to the Interrogatories are true.

I declare under penalty of perjury under the laws of the State of Hawaii that the foregoing is true and correct.

EXECUTED in Honolulu, Hawaii on this 15th day of February, 2011.



CERTIFICATE OF SERVICE

I, Joshua L. Simmons, hereby certify that on this date I caused a copy of the foregoing
**PLAINTIFFS AND COUNTERCLAIM DEFENDANTS' THIRD AMENDED
SUPPLEMENTAL WRITTEN OBJECTIONS AND RESPONSES TO XIO
INTERACTIVE INC.'S FIRST SET OF INTERROGATORIES** to be served via electronic
mail upon the following counsel for Defendant Xio Interactive Inc.:

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Dated: February 15, 2011

/s/ Joshua L. Simmons
JOSHUA L. SIMMONS